CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35222/04
by Pavel IVANOV
against Russia

The European Court of Human Rights (First Section), sitting on 20 February 2007 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr S.E. JEBENS,
Mr G. MALINVERNI, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 27 August 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Pavel Petrovich Ivanov, is a Russian national who was born in 1948 and lives in Velikiy Novgorod.

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant is the sole founder, owner and editor of the *Russkoye Veche* newspaper. The newspaper has been published monthly since 2000 at the applicant's expense and has a circulation of 999 copies.

In 2003 the applicant was committed for trial on a charge of public incitement to ethnic, racial and religious hatred through the use of the mass-media (an offence under Article 282 § 1 of the Criminal Code). The

prosecution's case was that the applicant, through a series of publications in his newspaper, called for the exclusion of Jews from social life, alleged the existence of a causal link between social, economic and political discomfort and the activities of Jews, and portrayed the malignancy of the Jewish ethnic group.

The case was tried by the Novgorod Town Court.

At the trial the applicant asserted his innocence, maintaining that the "Ziono-Fascist leadership of the Jewry" was the source of all evils in Russia. He believed that, in the absence of reliable information, the Russian public could not learn the causes and reasons of its predicament. The aim of the publications in his newspaper had been to "[educate] the Russians and Jews who [had] suffered from Ziono-Fascist ideology".

On 8 September 2003 the Town Court acquitted the applicant, finding that it was not proven that he was the author of the publication. On 14 October 2003 the Novgorod Regional Court quashed the acquittal and remitted the case.

On 9 and 30 December 2003 the Town Court refused the applicant's petitions for a new socio-humanitarian and authorship report into his publications.

On 10 February 2004 the applicant asked the Town Court to commission a history-social report that would clarify the following questions:

> "1. Are the Jews a race?
>
> 2. Are the Jews a nation?
>
> 3. If the Jews are a nation, from what historical period?
>
> 4. Are the Jews in Russia a nation or a Judaic diaspora?
>
> 5. May the adjective 'national' or the term 'national dignity' be used in respect of a member of the Judaic diaspora?"

On 11 February 2004 the Town Court refused the applicant's request, noting that the answers to those questions had already been obtained by the initial socio-humanitarian report. The Town Court also noted:

> "In the court's view, it is a generally accepted fact that members of any nation, nationality or ethnic group have national dignity, which is determined by their national self-consciousness, on the basis of which they identify themselves as members of that ethnic group."

On 20 February 2004 the Novgorod Town Court found the applicant guilty of inciting to racial, national and religious hatred and prohibited him from engaging in journalism, publishing and disseminating in the mass-media for a period of three years. The finding of guilt was based, in particular, on socio-humanitarian, socio-psychological and linguistic reports and on oral testimony by the experts. The applicant maintained before the court that he could not have incited to national hatred because the Jews did not exist as a race or nation.

The applicant lodged an appeal, reiterating that the Town Court wrongly considered that the "Jewish nation" existed.

On 27 April 2004 the Novgorod Regional Court upheld the conviction. It struck down the prohibition on journalistic activity because that particular form of penalty had been introduced into the Criminal Code after the imputed events, and instead sentenced the applicant to a fine of 10,000 Russian roubles (approximately 300 euros).

COMPLAINTS

1. The applicant complained, in general terms, that his conviction for incitement to racial hatred had not been justified.

2. The applicant complained under Article 13 of the Convention that the domestic courts had founded his conviction on contradictory findings in the expert reports and had refused his request for a report to determine whether the Jews formed a nation.

3. The applicant complained under Article 14 of the Convention that he was discriminated against because of his religious beliefs.

THE LAW

1. The Court considers that by complaining about his conviction for incitement to racial hatred in connection with his publications, the applicant alleged, in essence, a violation of his right to freedom of expression guaranteed under Article 10 of the Convention, which provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Court notes at the outset that it is not for it to determine what evidence was required under Russian law to demonstrate the existence of the constituent elements of the offence of inciting to racial hatred. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. The Court's task is merely to review under Article 10 the decisions they delivered pursuant to their power of appreciation (see, among other authorities, *Lehideux and Isorni v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, § 50).

The Court further reiterates that, although its case-law has enshrined the overriding and essential nature of the freedom of expression in a democratic

society (see, among other authorities, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, § 49, and *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, § 41), it has also laid down the limits to that freedom. The Court has held, in particular, that speech which is incompatible with the values proclaimed and guaranteed by the Convention would be removed from the protection of Article 10 by virtue of Article 17 of the Convention, which provides:

> "Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

The examples of such speech examined by the Court have included statements denying the Holocaust, justifying a pro-Nazi policy, alleging the prosecution of Poles by the Jewish minority and the existence of inequality between them, or linking all Muslims with a grave act of terrorism (see *Lehideux and Isorni*, cited above, §§ 47 and 53; *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX; *W.P. and Others v. Poland* (dec.), no.42264/98, 2 September 2004; *Norwood v. the United Kingdom* (dec.), no. 23131/03, 16 November 2004; and *Witzsch v. Germany* (dec.), no. 7485/03, 13 December 2005).

In the present case, the applicant authored and published a series of articles portraying the Jews as the source of evil in Russia. He accused an entire ethnic group of plotting a conspiracy against the Russian people and ascribed Fascist ideology to the Jewish leadership. Both in his publications and in his oral submissions at the trial, he consistently denied the Jews the right to national dignity, claiming that they did not form a nation. The Court has no doubt as to the markedly anti-Semitic tenor of the applicant's views and it agrees with the assessment made by the domestic courts that he sought through his publications to incite hatred towards the Jewish people. Such a general and vehement attack on one ethnic group is in contradiction with the Convention's underlying values, notably tolerance, social peace and non-discrimination. Consequently, the Court finds that, by reason of Article 17 of the Convention, the applicant may not benefit from the protection afforded by Article 10 of the Convention.

It follows that this part of the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

2. The applicant complained under Article 13 of the Convention that his conviction had been founded on contradictory evidence and that the court had refused to order an expert report which could have shown the veracity of his contention that the Jews did not form a nation.

In so far as the applicant's grievance may be understood as a complaint about a violation of the right to a fair trial under Article 6 § 1 of the Convention, the Court reiterates that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily

matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In the present case the Court does not see any factor by which it can be established that the applicant's right to a fair trial was infringed. The District and Regional Courts gave their judgments at the end of adversarial proceedings, in which the applicant was present and represented. The applicant was able to expose the alleged shortcomings of the expert reports commissioned by the prosecution and to submit all the observations and arguments he deemed necessary. The courts assessed the credibility of the evidence having regard to the applicant's submissions and gave reasons for their findings. The mere fact that the applicant disagreed with the courts' decisions does not suffice to conclude that the proceedings were not fair.

Furthermore, the Court reiterates that, according to its constant case-law, Article 13 of the Convention applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The Court has found above that the applicant's complaint under Article 10 was inadmissible, as incompatible *ratione materiae* with the provisions of the Convention. Article 13 is therefore inapplicable to the case.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant also complained under Article 14 of the Convention that he was discriminated against on account of his religious beliefs.

The Court reiterates that, in accordance with its established case-law, Article 14 has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols (see, among many other authorities, *Gaygusuz v. Austria*, no. 17371/90, § 36, ECHR 1996-IV). In the present case the applicant's complaints under the substantive Convention Articles were found inadmissible and, accordingly, there is no room for application of Article 14.

It follows that the complaint under Article 14 must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President